

SERVICE DATE – JUNE 12, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33407

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION CONSTRUCTION
INTO THE POWDER RIVER BASIN

Decided: June 7, 2006

The Board recently gave final approval to Dakota, Minnesota & Eastern Railroad Corporation (DM&E) to construct a 280-mile rail line from South Dakota to the Powder River Basin in Wyoming, subject to 147 environmental mitigation conditions. See Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, STB Finance Docket No. 33407 (STB served Feb. 15, 2006) (2006 Decision).¹ Among the environmental conditions we imposed, Condition Nos. 121-144 are site-specific environmental mitigation measures and apply only to listed communities in Minnesota, South Dakota and Wyoming that, at the time the decision was issued, had not entered into voluntary negotiated agreements with DM&E establishing mutually satisfactory measures to address environmental and other local concerns.² Condition No. 138, in particular, applies only to the City of Pierre, SD (Pierre), and requires DM&E to install a grade separated crossing at Sioux Avenue or another mutually acceptable location in Pierre. The condition provides that installation is to be completed within one year after DM&E transports more than 50 million tons of coal through the city annually for more than one year.

¹ Pending judicial review in Mayo Foundation et al. v. STB, Nos. 06-2031 et al. (8th Cir. filed April 14, 2006).

² During the course of the environmental review in this proceeding, DM&E submitted negotiated agreements it had executed with 51 of the 56 affected communities on its existing line. We required compliance with these agreements as a condition (see Condition No. 20) to our approval in the 2006 Decision, and provided that the opportunity to negotiate such agreements (and to ask the Board to impose compliance with them as conditions, in lieu of site specific mitigation that would otherwise apply) would remain available throughout the environmental oversight period. 2006 Decision, slip op. at 14 n.20.

On February 27, 2006, Pierre submitted to the Board a copy of an agreement entered into between Pierre and DM&E, dated January 18, 2006. Pierre requests that the Board require compliance with this Negotiated Agreement.³ By letter dated May 1, 2006, DM&E confirms that the site specific mitigation for Pierre in Condition No. 138 can be eliminated because it has been supplanted by the parties' voluntary written agreement.

In view of the Negotiated Agreement between Pierre and DM&E, we will: (1) add Pierre to the table set forth in Condition No. 120, which is a list of all communities with which DM&E has entered into Negotiated Agreements regarding environmental issues associated with this construction project;⁴ and (2) remove Condition No. 138 because that condition has been superseded by the Pierre/DM&E Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Pierre is added to the list of South Dakota communities with Negotiated Agreements in Table 12-2, Environmental Condition No. 120, located in the Appendix of the 2006 Decision.
3. Environmental Condition No. 138, located in the Appendix of the 2006 Decision, is deleted.
4. This decision is effective on its date of service.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary

³ The Board reserved jurisdiction to implement the oversight condition imposed in the 2006 Decision, to allow it to monitor DM&E's progress in implementing the environmental mitigation and to resolve any unanticipated environmental problems that arise. During the oversight period, the Board will impose additional environmental conditions or modify conditions, if warranted.

⁴ Copies of the negotiated agreements on file at the Board are kept confidential. By letter dated April 4, 2006, DM&E requests that its agreement with Pierre, along with future agreements submitted to the Board, be afforded the same degree of confidentiality. This request will be honored.